

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Squad #6	CCRB Case #: 201509246	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/23/2015 1:50 AM, Tuesday, 08/25/2015	Location of Incident: § 87(2)(b) 75th Precinct stationhouse	Precinct: 75	18 Mo. SOL 2/23/2017	EO SOL 2/23/2017	
Date/Time CV Reported Tue, 08/25/2015 11:21 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/29/2015 11:11 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Seiger	16689	952225	075 PCT
2. Officers			075 PCT
3. SGT Henry Daverin	03631	945645	075 PCT
4. An officer			075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Luis Cabrera	24683	950135	075 PCT
2. SGT Steven Farrell	01044	921324	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Henry Daverin	Abuse: Sergeant Henry Daverin entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B. An officer	Abuse: At § 87(2)(b) in Brooklyn, an officer threatened to arrest § 87(2)(b)	§ 87(2)(b)
C. An officer	Force: At § 87(2)(b) in Brooklyn, an officer used physical force against individuals.	§ 87(2)(b)
D. An officer	Abuse: At § 87(2)(b) in Brooklyn, an officer threatened to arrest individuals.	§ 87(2)(b)
E.POM Michael Seiger	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Michael Seiger searched § 87(2)(b) book bag.	§ 87(2)(b)
F. Officers	Abuse: At the 75th Precinct stationhouse, officers threatened to arrest § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

This case exceeded the 90-day benchmark due to § 87(2)(g)

On August 25, 2015, § 87(2)(b) filed this complaint via 311 and the Internal Affairs Bureau (BR09 & BR25). IAB did not refer the complaint to the CCRB since no FADOs were alleged at the time. On October 29, 2015, § 87(2)(b) filed this complaint via phone with the CCRB.

On August 23, 2015, at approximately 1:50 a.m., § 87(2)(b) female companion, § 87(2)(b) and § 87(2)(b)'s family, including § 87(2)(b) were having a party in the backyard of § 87(2)(b) in Brooklyn. § 87(2)(b) was the DJ at the time when Sergeant Henry Daverin, PO Michael Seiger, PO Luis Cabrera, and additional officers from the 75<sup>th</sup> Precinct arrived at § 87(2)(b) and proceeded to walk through the open gated fence in order to enter the backyard (**Allegation A**). As the officers made their entry into the backyard, an unidentified officer allegedly told § 87(2)(b) that he could be arrested because underage children were present and the police received noise complaints from his neighbors (**Allegation B**). The unidentified officer then entered the backyard and directed the partygoers to leave. The unidentified officer allegedly pushed the individuals and allegedly threatened to arrest them (**Allegation C** and **Allegation D**). While in the backyard, Sgt. Daverin, PO Seiger, and PO Cabrera began seizing § 87(2)(b) DJ equipment that consisted of a mixing table, two speakers, and a laptop. PO Seiger allegedly obtained the laptop from within § 87(2)(b) book bag (**Allegation E**). PO Seiger issued § 87(2)(b) a summons for § 87(2)(b) (BR11) and § 87(2)(b) was informed that his seized property would be transported to the 75<sup>th</sup> Precinct stationhouse. All of the officers then left the location.

Immediately after the incident, § 87(2)(b) and § 87(2)(b) went to the 75<sup>th</sup> Precinct stationhouse in an attempt to obtain his DJ equipment. While at the 75<sup>th</sup> Precinct stationhouse, all of the officers who were present at § 87(2)(b) in Brooklyn, allegedly told § 87(2)(b) “You want to go to jail tonight? Go home” (**Allegation F**). § 87(2)(b) was informed that he could obtain his DJ equipment after his scheduled court appearance for the summons. § 87(2)(b) and § 87(2)(b) then left the stationhouse.

Sgt. Daverin acknowledged his presence during the incident at § 87(2)(b) in Brooklyn, § 87(4-b), § 87(2)(g)

§ 87(2)(b) was the only individual summonsed and no individuals were arrested as a result of the incident at § 87(2)(b) in Brooklyn.

There is no video footage from both incident locations.

### Mediation, Civil and Criminal Histories

- On November 16, 2015, § 87(2)(b) accepted mediation during his CCRB interview. During a subsequent phone conversation, § 87(2)(b) was informed that the investigation would first need to identify the homeowner of § 87(2)(b) as they were the victim of the entry, and the homeowner would also have to accept mediation before the case could be referred to

the Alternative Dispute Resolution Unit. § 87(2)(b) identified via the investigation as the homeowner, was ultimately uncooperative with providing a sworn statement to the CCRB.

§ 87(2)(g)

- On April 27, 2016, a request to determine if a Notice of Claim was filed in regards to this incident was submitted to the New York City Office of the Comptroller. Confirmation will be forwarded upon receipt (BR24).
- On October 20, 2015, § 87(2)(b) summons, number § 87(2)(b) was dismissed on the basis of being legally insufficient by the New York County Criminal Court (BR21).

- § 87(2)(b)
- § 87(2)(b)

#### **Civilian and Officer CCRB Histories**

- Sgt. Daverin has been a member of the service for 8 years and has 35 CCRB allegations that reflect a fact pattern relevant to this case.
  - § 87(4-b), § 87(2)(g)
  - In case number 201502623, allegations of a vehicle search, frisk, and refusal to provide name and shield number were substantiated and the Board recommended Command Discipline A.
  - In case numbers 201601274, 201601578, 201602020, and 201602273, allegations of threat of force, vehicle stop, vehicle search, threat of arrest, detainment, physical force, strip-search, refusal to obtain medical treatment, discourtesy, and a stop are currently being investigated.
- PO Seiger has been a member of the service for 4 years and has 5 CCRB allegations, none of which have been substantiated § 87(2)(g)
  - In case number 201602020, allegations of physical force, threat of arrest, and a frisk are currently being investigated.
- This is § 87(2)(b) first CCRB complaint (BR06).
- This is the second complaint filed by § 87(2)(b) § 87(2)(b)

#### **Potential Issues**

- There is no video footage from either incident location.
- § 87(2)(b) and § 87(2)(b) were asked several times to provide contact information for witnesses present at the party. To date, the requested information was never provided to the undersigned.

- On December 28, 2015, field work at § 87(2)(b) was unsuccessful in identifying potential witnesses present during the party (BR01).
- § 87(2)(b) and § 87(2)(b) provided phone statements after the subject officers were already interviewed and they both failed to appear for their CCRB interviews. Subsequent contact attempts to § 87(2)(b) and § 87(2)(b) were exhausted and unsuccessful in reaching them to reschedule their interviews. As such, the investigation does not have sworn statements from them.
- There were a multitude of inconsistencies between and amongst the civilian and officer statements regarding the events that transpired at both incident locations and which officers were the subject of the allegations. As such, the undersigned attempted to schedule an officer photo viewing with § 87(2)(b) and § 87(2)(b) but they all failed to appear at the CCRB for their appointments and subsequent contact attempts were exhausted and unsuccessful in reaching them.

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

§ 87(2)(g)

PO Seiger and PO Cabrera corroborated that they were the first officers to arrive at § 87(2)(b). PO Seiger indicated that after asking unidentified individuals for the homeowner, he and PO Cabrera walked through the open gated fence and into the backyard. PO Seiger stated that his Conditions sergeant was most likely present during the incident, but he did not recall at what time the sergeant arrived. However, PO Cabrera stated that although he and PO Seiger arrived first, they waited until Sgt. Daverin arrived before all the officers proceeded to enter on Sgt. Daverin's command. Meanwhile, Sgt. Daverin believed he was with PO Seiger and possibly PO Alvin, PO Cabrera, and PO Salazar when they first arrived at the location together and confirmed that he made the decision to enter the location. Although PO Seiger indicated that he entered the location prior to the presence of any supervisors, this is not corroborated by Sgt. Daverin or PO Cabrera. § 87(2)(g)

§ 87(2)(b) alleged that the unidentified officer who first entered his front yard also threatened to arrest him and unidentified individuals, and pushed the unidentified individuals in an attempt to disperse the party. § 87(2)(b) identified this officer as the "Lieutenant" and described him as a 5'9" to 5'10" tall, white or Hispanic male in his mid-30s, with a muscular or average build, short black or brown hair, and dressed in plainclothes. Sgt. Daverin, who was § 87(2)(b)-old and dressed in plainclothes at the time of the incident, is a 5'11" tall, White male who has green eyes, brown hair, and a heavy build (BR16). PO Seiger, who was § 87(2)(b)-old and dressed in plainclothes at the time of the incident, is a 6'2" tall, White male who has brown eyes, brown hair, and a heavy build (BR13). PO Cabrera, who was § 87(2)(b)-old and dressed in plainclothes at the time of the incident, is a 5'8" tall, Hispanic male who has black hair and brown eyes. § 87(2)(b)'s description of the subject officer nearly encompasses all three of the aforementioned officers' pedigrees.

§ 87(2)(g)

§ 87(2)(g)

When § 87(2)(b) initially filed this complaint with the CCRB, he identified PO Seiger as the officer who took his laptop out of his book bag during the incident. § 87(2)(b) described PO Seiger as a 5'9" tall, chubby White male with light-colored skin, who had gold or blonde hair, and was dressed in plainclothes. During § 87(2)(b) sworn CCRB statement, he described the officer who took his laptop out of his book bag as being a stocky, 6-foot tall, White male in his 20s who had light brown and blonde hair and was dressed in plainclothes. Sgt. Daverin and PO Cabrera firmly denied searching a book bag to seize property and did not observe any other officers do so. When PO Seiger was asked if he searched § 87(2)(b) book bag at any point during the incident, he stated, "I don't recall doing that." PO Seiger's answer to the aforementioned question was not a denial of the action and does not rule out the possibility that he had seized § 87(2)(b) laptop from within the book bag. PO Seiger, who was § 87(2)(b)-old and dressed in plainclothes at the time of the incident, is a 6'2" tall, White male who has brown eyes, brown hair, and a heavy build (BR13). § 87(2)(g)

During § 87(2)(b) statement to IAB, he indicated that he went to the 75<sup>th</sup> Precinct stationhouse at an unknown time the Monday after the incident occurred, which would have been August 25, 2015 (BR25). However, during his sworn CCRB statement, § 87(2)(b) indicated that he went to the 75<sup>th</sup> Precinct stationhouse directly after the incident occurred at § 87(2)(b) in order to speak with the "Captain." § 87(2)(b) alleged that all of the unidentified officers who were present at § 87(2)(b) were also present at the 75<sup>th</sup> Precinct stationhouse and they collectively told him, "You want to go to jail tonight? Go home." § 87(2)(b) could not provide descriptions of the officers or how many officers made the aforementioned statement to him. According Event D15082302335, two lieutenants, two patrol sergeants, and an Anti-Crime sergeant responded to § 87(2)(b) undoubtedly with their partners and additional officers (BR18). Neither Sgt. Daverin, PO Seiger, nor PO Cabrera acknowledged interacting with or observing § 87(2)(b) at the 75<sup>th</sup> Precinct stationhouse after the incident and they all denied making or hearing the alleged threat of arrest against § 87(2)(b) Sgt. Farrell was the desk officer until 4:30 a.m. then finished his tour at 8:02 a.m. at the administration desk on the incident date. Sgt. Farrell could not recall if he ever directed a male civilian to leave the stationhouse or if he told a male civilian, "Do you want to go to jail tonight? Go home." Sgt. Farrell did not overhear any officers make the aforementioned statements towards a male civilian during his tour on the incident date and explained that any officers present in the stationhouse that are free would assist a civilian attempting to obtain their seized property. § 87(2)(g)

### **Allegations Not Pleaded**

**Abuse of Authority:** Officers seized § 87(2)(b) two speakers, mixing table, and laptop based on the filed property vouchers (BR12). NYPD Patrol Guide Procedure 214-23 directs officers to seize sound reproduction devices as evidence that the violator possessed the device and that the device was operable in lieu of issuing the violator an unreasonable noise summons (BR04).

§ 87(2)(g)

### **Allegation A – Abuse of Authority: Sergeant Henry Daverin entered § 87(2)(b) in Brooklyn.**

It is undisputed that officers responded to a large party at § 87(2)(b) in Brooklyn and entered the backyard area in an attempt to correct the condition of the noise disturbance.

§ 87(2)(b) stated that he began playing music outside at approximately 11:25 p.m. and there were approximately sixty-five unidentified individuals present in the backyard at the time. § 87(2)(b) indicated that the music was already turned off before officers arrived at the location at approximately 1 a.m. § 87(2)(b) observed § 87(2)(b) attempt to close the gated fence to keep the officers from entering, but § 87(2)(b) was unable to do so because an officer pulled the gate completely open and walked into the backyard along with additional officers. By the time the officers entered the backyard, only six unidentified individuals were present since the rest of the unidentified individuals present at the party had ran off when they found out officers had arrived. An officer informed § 87(2)(b) that his speakers would be seized and officers immediately began to seize § 87(2)(b) DJ equipment. § 87(2)(b) never indicated that he received a warning to lower or turn the music off from the officers since he previously stated that the music was already off when officers first arrived. § 87(2)(b) was only informed that the officers received thirty noise complaints.

§ 87(2)(b) stated that he and his family had a get-together in his backyard with an unknown amount of unidentified individuals when he was informed that officers were in front of his home at approximately 1 a.m. When § 87(2)(b) walked out of his home, an unidentified individual had opened the gated fence to “get a better look” at the officers standing in front of the fence. § 87(2)(b) also observed a crowd of unidentified individuals standing in front of the gated fence and confirmed that music was playing from his backyard when the officers first arrived. Before § 87(2)(b) was able to reach the gated fence, an officer pushed the gate completely open and entered the front yard along with eight additional officers. § 87(2)(b) informed the officers that they had entered his private property and in response, an officer told § 87(2)(b) that the officers had a right to enter since the unidentified individual let them in. § 87(2)(b) countered this response by stating that the unidentified individual could not allow the officers to enter his private property since the unidentified individual was not a resident of the home. The officer informed § 87(2)(b) that there were underage children present at the party and the police received noise complaints from his neighbors regarding his party. When the officers began walking to the backyard, § 87(2)(b) turned the music off from within his home. § 87(2)(b) observed officers seize § 87(2)(b) DJ equipment, which caused § 87(2)(b) to become enraged and argue with the officers. An officer told § 87(2)(b)

§ 87(2)(b) that his DJ equipment would be seized because he did not stop playing music. § 87(2)(b) and another officer attempted to calm § 87(2)(b) down to no avail as he continued to act irate and officers formed a barrier around § 87(2)(b) because they believed § 87(2)(b) was going to lash out.

When § 87(2)(b) provided a phone statement, she explained that § 87(2)(b) was not supposed to interact or be present at her family's home because she had an Order of Protection against him at the time of the incident. § 87(2)(b) stated that the backyard and front yard were completely full of unidentified individuals, many of whom were young, and there were also unidentified individuals standing on the sidewalk in the street in front of § 87(2)(b). § 87(2)(b) did not witness the officers' arrival or entry through the gated fence, but her family told her that officers told the unidentified homeowner to lower the music and the officers eventually entered through the gated fence when they observed a young male walk out of the party holding alcohol. The unidentified homeowner opened the gated fence to allow the officers to enter. As the officers walked into the backyard, § 87(2)(b) and her family told § 87(2)(b) to lower the music, but § 87(2)(b) stated, "Fuck the cops" and continued to play music. When an officer directed § 87(2)(b) to turn the music off, he initially complied, but continued to play loud sound effects. Since § 87(2)(b) would not comply with the officer's directive, the officers began seizing § 87(2)(b) DJ equipment. In response, § 87(2)(b) began to scream profanities at the officers and act "crazy." § 87(2)(b) indicated that it took eleven unidentified individuals to restrain § 87(2)(b) because it seemed as if he would have physically gone after the officers. Even after § 87(2)(b) was informed that his DJ equipment would not be seized if he calmed down, § 87(2)(b) continued to act "crazy" so his property was ultimately seized. § 87(2)(b) defined § 87(2)(b) "crazy" behavior as "a threat to the cops where they wanted to shoot him because they felt threatened." § 87(2)(b) believed § 87(2)(b) behavior was due to the alcohol he consumed earlier.

Aside from the interviewed officers' inconsistent statements regarding who initially entered the location, they all corroborated that they responded to § 87(2)(b) in regards to noise complaints and they heard loud music playing from a block or more away from § 87(2)(b). Upon the officers' arrival, they observed more than twenty people in front of the location who were standing on the sidewalk and in the street. PO Seiger and PO Cabrera corroborated that they also observed individuals drinking from cups, which they believed contained alcohol, and also smelled marijuana coming from the home. Sgt. Daverin and PO Seiger corroborated that since the gated fence was already open when they approached the home, they walked into the front yard without incident and proceeded to walk through the open garage doors to enter the backyard. Sgt. Daverin, PO Seiger, and PO Cabrera corroborated that they did not attempt to identify the homeowner or speak with the complainants of the noise complaints prior to their entry. While PO Seiger believed he initially spoke with § 87(2)(b) and informed him that he would be issued a summons for unreasonable noise and his property would be confiscated. PO Seiger explained that officers did not issue any warnings to lower the music since it was the officers' intention to shut the party down as it was 2 a.m. on a Sunday morning in a residential area and loud outdoor noise or parties cannot occur past 11 p.m. However, Sgt. Daverin testified that he was the officer who immediately approached § 87(2)(b) and directed him to turn the music volume down or else he would receive a summons and his equipment would be seized. § 87(2)(b) refused by stating that officers were on private property and Sgt. Seiger issued a second directives for § 87(2)(b) to lower the music volume, but § 87(2)(b) again refused to do so. Sgt.

Seiger informed § 87(2)(b) that he would receive a summons and his equipment would be seized, at which point § 87(2)(b) began to act violent, screamed profanities, and individuals had to remove § 87(2)(b) in order to calm him down.

NYPD Patrol Guide Procedure 214-23, pertaining to unnecessary noise violations, define noise as unreasonable when it either disturbs the peace, comfort or repose; or endangers the health or safety of a reasonable person of normal sensitivities. Some factors for police officers' consideration when managing instances of unreasonable noise are the character of the neighborhood in question, the time of day, and whether the party responsible for the noise has been asked to cease or lower the sound level, but has refused; or been warned in an attempts to correct the condition. Furthermore, the decision to forcibly enter into a private or semi-private premises to correct the noise complaints will ONLY be made by a precinct commander/duty captain and ONLY as a last resort, after requests to stop the noise have been ignored (BR04).

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Abuse of Authority: At § 87(2)(b) in Brooklyn, an officer threatened to arrest § 87(2)(b)**

**Allegation C – Force: At § 87(2)(b) in Brooklyn, an officer used physical force against individuals.**

**Allegation D – Abuse of Authority: At § 87(2)(b) in Brooklyn, an officer threatened to arrest individuals.**

§ 87(2)(b) would not divulge the identity of the homeowner aside from stating that the homeowner lived on the first floor of § 87(2)(b). On January 8, 2016, during a phone conversation with property owner § 87(2)(b), it was revealed that a male named § 87(2)(b) resides on the first floor of the home and is the only resident with direct access to the backyard and provided § 87(2)(b)'s phone number. On January 11, 2016, § 87(2)(b) was contacted and a voicemail was left. That same day, a please call letter was mailed to § 87(2)(b) which was not returned by the United States Postal Service.



On January 11, 2016, a WhitePages search confirmed that a § 87(2)(b) resided at § 87(2)(b) but a phone number was not listed. A NYPD Booking, Arraignment, and Disposition System database search confirmed § 87(2)(b)'s address, but did not provide any phone numbers for him. Database searches of CLEAR and Lexis Nexis confirmed § 87(2)(b)'s address and yielded eight phone numbers. Between January 11, 2016 and February 3, 2016, several calls were made to § 87(2)(b) at all of the yielded phone numbers and voicemails were left, several of the phone numbers were not in service, or the respondents indicated that they did not know § 87(2)(b). On February 3, 2016, § 87(2)(b) called the CCRB from the phone number provided by § 87(2)(b) Cohen, confirmed his contact information and presence during the incident, and scheduled an interview for February 17, 2016. On February 16, 2016, § 87(2)(b) was called a third time and a voicemail was left confirming his interview scheduled for the next day.

On February 17, 2016, § 87(2)(b) missed his scheduled interview and did not call ahead to cancel or reschedule. That same day, a missed appointment letter was mailed to § 87(2)(b) which was not returned by the United States Postal Service. On February 18, 2016, § 87(2)(b) was called a fourth time and a voicemail was left. On February 22, 2016, § 87(2)(b) was called a fifth time and the call was answered, but was quickly disconnected before the undersigned could speak with § 87(2)(b). Several minutes later, a call was placed to § 87(2)(b) and a voicemail was left informing him that the CCRB would not be able to investigate his portion of the complaint without a sworn statement.

On April 29, 2016, a New York State and New York City Department of Corrections Inmate Look-Up search revealed that § 87(2)(b) has not been previously incarcerated (BR26). To date, even after the voicemail was left regarding the CCRB's inability to investigate his portion of the complaint without his sworn statement, § 87(2)(b) has not contacted the CCRB. § 87(2)(g)

§ 87(2)(g)

**Allegation E – Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer Michael Seiger searched § 87(2)(b) book bag.**

As discussed in the Explanation of Subject Officer Identification section, it is in dispute as to whether § 87(2)(b) laptop was taken from within his book bag since none of the officers acknowledged having done so and neither § 87(2)(b) nor § 87(2)(b) indicated observing officers seize § 87(2)(b)'s laptop from within his book bag.

NYPD Patrol Guide Procedure 214-23 directs officers to seize sound reproduction devices as evidence that the violator possessed the device and that the device was operable in lieu of issuing the violator an unreasonable noise summons (BR04).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation F – At the 75<sup>th</sup> Precinct stationhouse, officers threatened to arrest** § 87(2)(b)

As has been discussed in the Explanation of Subject Officer Identification Section, § 87(2)(b) was inconsistent with the dates and times that he went to the stationhouse in an effort to obtain his seized property and he could not provide any officer descriptions. § 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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Squad: 6

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date